



1 CitiMortgage, Inc., its assignees and/or successors, ("Citi") in the above-entitled  
2 Bankruptcy proceeding, hereby submits the following Objections to Confirmation of the Chapter  
3 11 Plan proposed by ("Debtor") Efrain Olivares. Question 'Are Any Debtors Also A Borrower'  
4 has not been answered.

5 Citi is entitled to receive payments pursuant to a Promissory Note which matures on  
6 11/1/2037 and is secured by a Deed of Trust on the subject property commonly known as 403 W.  
7 Kenneth Road, Glendale, CA 91202 which is Debtor's primary residence. As of 8/2/2013, the  
8 amount in default was \$472,207.80 with a total claim of \$1,803,138.76, as described in the Proof  
9 of Claim filed by Citi on or about 11/1/2013, incurred with respect to the default.

10 **THE CHAPTER 11 PLAN IS NONCONFIRMABLE**

11 11 U.S.C. §1322(b)(2) provides that a primary residence may not be modified. Class 2(a)  
12 of the Plan proposes four options for plan treatment. The first option is to apply for a loan  
13 modification. The second option is to modify the loan through the plan with a principal balance  
14 reduction. The third option is to cure the arrears over 50 months. The fourth is to surrender the  
15 subject property. Because the subject property is the primary residence, it cannot be modified in  
16 the plan. As such, options one and two are not permissible. With regard to the third option, a  
17 cure over 50 months is not acceptable to Citi. A cure over 12 months is acceptable. Lastly,  
18 option four is acceptable.

19 Further, Citi objects to this treatment as speculative. Debtor may not premise the cure of  
20 Citi's arrears on a speculative event in the future such as a sale or refinance or loan modification.  
21 Courts have long held that a plan should be not be confirmed where it is proposing a balloon  
22 payment or otherwise is contingent on a speculative event to take place in during the life of the  
23 plan. See *In Re Gavia* (9<sup>th</sup> Cir. BAP 1982) 24 BR 573,574; *In Re Nantz* (BC ED MO 1987) 75  
24 BR 617, 618-619; *In Re Fantasia* (1<sup>st</sup> Cir. BAP 1997) 211 BR 420,424; *In Re Craig* (BC ND OH  
25 1990) 112 BR 224,225. Where the feasibility of the Plan is contingent upon a speculative event  
26 such as loan modification, the confirmation should be denied.

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CONCLUSION

Any Chapter 11 Plan proposed by the Debtor must provide for and eliminate the Objections specified above in order to be reasonable and to comply with applicable provisions of the Bankruptcy Code. Secured Creditor respectfully requests that confirmation of the Chapter 11 Plan as proposed by the Debtor be denied, or in the alternative, be amended to provide for full payoff of the arrearages and full secured claim as detailed in Secured Creditor's Proof of Claim to Secured Creditor.

WHEREFORE, Secured Creditor prays as follows:

1. For attorneys' fees and costs herein,
2. For such other relief as this Court deems proper.

Respectfully submitted,

**McCarthy & Holthus, LLP**

3/19/2014

By: /s/ Kristin A. Zilberstein  
Kristin A. Zilberstein, Esq.  
Attorney for Secured Creditor

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
1770 Fourth Avenue  
San Diego, CA 92101

A true and correct copy of the foregoing document entitled (*specify*): **OBJECTION TO CONFIRMATION OF CHAPTER 11 PLAN** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **3/19/2014**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

**DEBTOR(S) COUNSEL**  
Michael Avanesian  
michaelavanesian@tilemlaw.com

**US TRUSTEE**  
ustpregion16.la.ecf@usdoj.gov

**TRUSTEE COUNSEL**  
Queenie K Ng  
queenie.k.ng@usdoj.gov

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) **3/19/2014**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

**DEBTOR(S)**  
Efrain Olivares, 403 W. Kenneth Road, Glendale, CA 91202

**TRUSTEE**  
United States Trustee, United States Trustee, 725 S Figueroa St., 26th Floor, Los Angeles, CA 90017

**JUDGE'S COPY**  
The Honorable Judge, Thomas B. Donovan, United States Bankruptcy Court - Los Angeles Division, 255 E. Temple Street, Suite 1352, Los Angeles, CA, 90012

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

**3/19/2014**

*Date*

**David Fry**

*Printed Name*

**/s/ David Fry**

*Signature*

## **ADDITIONAL SERVICE INFORMATION**

### **SPECIAL NOTICE(S)**

David A Tilem  
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### **20 LARGEST UNSECURED CREDITORS**

Bank Of Amercia, P.O. Box 15019, Wilmington, DE 19886

California Business Bureau Barlow Respiratory Hospital, Post Office Box 5010, Monrovia, CA 91017

Chase Card Services, P.O. Box 94014, Palatine, IL 60094

CMRE Financial Services, 3075 E. Imperial Highway #200, Brea, CA 92821

Diane E. Wu, MD, SC, APC, 148 South Garfield Avenue, #300, Alhambra, CA 91801

Glendale Adventist Health Center, 2100 Douglas Boulevard, Roseville, CA 95661

Lenscrafters, C/O GE Capital Retail Bank, Post Office Box 960061, Orlando, FL 32896

Nordstrom Bank, P.O. Box 79134, Phoenix, AZ 85062

Saks World Elite Mastercard, Post Office Box 60501, City Of Industry, CA 91716

Talbots, Post Office Box 182782, Columbus, OH 43218

Truenorth, Ar, LLC, 3050 Fite Circle, #107, Sacramento, CA 95827

Wells Fargo Dealer Services, P.O. Box 25341, Santa Ana, CA 92799